Sukumaran s/o Sundram v Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Anor and other applications

HIGH COURT (TAIPING) — CRIMINAL APPLICATIONS NO 44–24–94, 44–25–94, 44–26–94, 44–27–94, 44–28–94, 44–29–94 AND 44–30–94
ABDUL MALIK ISHAK J
20 DECEMBER 1994

Preventive Detention *— Detention order — Detention under Emergency (Public Order and Prevention of Crime) Ordinance 1969 — Whether Deputy Minister could sign order stating Minister was satisfied that it was necessary to detain — Whether order valid — Federal Constitution arts 5(2) & 43A(2) — Emergency (Public Order and Prevention of Crime) Ordinance 1969 s 4(1)*

Criminal Procedure *— Habeas corpus — Preventive detention — Whether necessary to produce detainee in court before release — Federal Constitution art 5(2) — Emergency (Public Order and Prevention of Crime) Ordinance 1969 s 4(1)*

Statutory Interpretation *— Constitution — Interpretation of 'shall order him to be produced before the court' — Whether imperative or permissive — Whether words import a discretion — Federal Constitution art 5(2)*

The Deputy Minister of Home Affairs ('the Deputy Minister') issued seven detention orders which were in identical terms ('the detention orders'), against the applicant, Sukumaran, and six others ('the detainees') under s 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 ('the Ordinance'), and directed that they be detained at a rehabilitation centre. In effect, the orders stated that the Minister of Home Affairs ('the Minister') himself was satisfied that it was necessary to make the orders against the detainees under the first limb of s 4(1) of the Ordinance, ie to prevent them from acting in any manner prejudicial to the public order. However, the orders were not signed by the Minister, but by the Deputy Minister. The detainees applied for orders of habeas corpus, arguing that the orders shoud not have been signed by the Deputy Minister. They contended that the Minister could not be personally satisfied that the first limb of s 4(1) was breached, if the orders were signed by somebody else. On the other hand, the Deputy Minister raised the issue that even if the applications of habeas corpus were successful, the detainees should not be released before they were produced before the court as laid down by art 5(2) of the Federal Constitution.

Held, ordering that the detainees be forthwith released without being produced in court:

(1) Pursuant to s 7C of the Ordinance, the act of the Deputy Minister in making the orders was beyond the purview of challenge, save in regard to a question on compliance with any procedural requirement in the Ordinance.

(2) Section 4(1) of the Ordinance confers on the Minister the power to issue a detention order based on any one of two limbs, ie when it is necessary to prevent a person from acting in any manner prejudicial to the public, or when it is necessary for the suppression of violence or the prevention of crimes involving violence. These two limbs must be read disjunctively, and the detention order must be worded so as to show which particular limb the Minister wishes to apply with regard to the detention.

(3) In this case, there was a very serious procedural defect in the detention orders that went to the root of the matter. Although the Deputy Minister has the same power as the Minister under art 43A(2) of the Federal Constitution, the Deputy Minister must not act in part in exercising the power of detention under s 4(1) of the Ordinance. The Deputy Minister did not know the state of mind of the Minister and had acted mechanically in signing the detention orders. He was not empowered to sign the detention orders when he himself did not apply his mind to which limb of s 4(1) of the Ordinance he was acting under.

(4) It is trite law that the power to detain a person without trial must be expressed, clear and unequivocal, and cannot be exercised by sheer inference. Thus, one could not infer that the Deputy Minister was personnally satisfied that the first limb of s 4(1) was breached before signing the orders, and that he had acted as a whole.

(5) There was no need for the applicants to be produced before the court before their release. The words 'shall order him to be produced before the court and release him' in art 5(2) of the Federal Constitution are expressed in permissive language, as they are meant for the purpose of enabling something to be done. The words import a discretion and must be construed as discretionary because there was nothing in the subject matter to show that they were meant to be imperative and although art 5(2) was already in existence before the deletion of the old O 54 of the Rules of the High Court 1980 (concerning the power of a judge hearing the application of habeas corpus to order the release of a detainee), all the Malaysian judges except one, had seen it fit to release detainees without requiring their attendance before the court.

[Bahasa Malaysia summary

Timbalan Menteri Hal Ehwal Dalam Negeri ('Timbalan Menteri') telah mengeluarkan tujuh perintah tahanan yang mempunyai isi kandungan yang sama ('perintah tahanan') terhadap pemohon, Sukumaran, dan enam orang yang lain ('orang tahanan') di bawah s 4(1) Ordinan Darurat (Ketenteraman Awam dan Pencegahan Jenayah) 1969 ('Ordinan itu'), dan mengarahkan supaya mereka

ditahan di pusat pemulihan akhlak. Secara keseluruhannya, perintah tersebut menyatakan bahawa Menteri Hal Ehwal Dalam Negeri ('Menteri') sendiri berpuas hati yang perintah tersebut perlu dibuat terhadap orang tahanan di bawah cabang pertama s 4 Ordinan tersebut, iaitu untuk mencegah orang tahanan daripada bertindak dalam apa-apa cara yang mengancam ketenteraman awam. Walau bagaimanapun, perintah tersebut tidak ditandatangani oleh Menteri, tetapi Timbalan Menteri. Orang tahanan tersebut memohon untuk perintah habeas corpus, dan menghujah bahawa perintah tersebut tidak seharusnya ditandatangani oleh Timbalan Menteri. Mereka menyatakan bahawa adalah tidak mungkin Menteri sendiri berpuas hati yang s 4(1) terpakai, sedangkan orang lain yang menandatangani perintah tersebut. Sebaliknya, Timbalan Menteri pula menyatakan bahawa sesungguhpun permohonan habeas corpus tersebut berjaya, orang tahanan tersebut tidak boleh dibebaskan sebelum mereka dihadapkan ke mahkamah seperti yang ditetapkan oleh perkara 5(2) Perlembagaan Persekutuan.

Diputuskan, memerintahkan supaya orang-orang tahanan tersebut dibebaskan tanpa dihadapkan ke mahkamah terlebih dahulu:

(1) Menurut s 7 C Ordinan itu, tindakan Timbalan Menteri dalam membuat perintah adalah di luar skop cabaran, kecuali berhubungan dengan soalan tentang pematuhan dengan sebarang keperluan prosedur dalam Ordinan itu.

(2) Seksyen 4 (1) Ordinan itu memberikan kuasa kepada Menteri untuk mengeluarkan suatu perintah tahanan berdasarkan mana-mana satu daripada dua cabang, iaitu apabila ia adalah perlu untuk menghalang seseorang itu melakukan daripada bertindak dalam apa-apa cara yang mengancam ketenteraman awam, atau apabila ia adalah perlu untuk menyekat keganasan atau jenayah yang melibatkan keganasan. Kedua-dua cabang itu harus dibaca secara penyarak, dan perkataan-perkataan di dalam perintah tahanan harus menunjukkan cabang yang mana yang Menteri itu ingin gunakan sehubungan dengan tahanan itu.

(3) Di dalam kes ini, terdapat suatu kecacatan prosedur yang serius yang menyentuh inti perkara ini. Walaupun adalah jelas bahawa mengikut perkara 43A(2) Perlembagaan Persekutuan, Timbalan Menteri mempunyai kuasa yang sama seperti Menteri, Timbalan Menteri tidak harus bertindak secara sebahagian sahaja dalam melaksanakan kuasa penahanan di bawah s 4(1) Ordinan itu. Timbalan Menteri tidak mengetahui fikiran Menteri dan telah bertindak secara mekanikal dalam menandatangani perintah tahanan itu. Beliau tidak diberikan kuasa untuk menandatangani perintah tahanan itu di mana beliau sendiri tidak memikirkan tentang cabang yang manakah di dalam s 4(1) Ordinan itu beliau menggunakan untuk bertindak.

(4) Adalah undang-undang mantap bahawa kuasa untuk menahan seseorang tanpa perbicaraan mestilah nyata, jelas dan tidak taksa, dan kuasa ini tidak boleh digunakan melalui inferens semata-mata. Oleh itu, seseorang itu tidak boleh membuat inferens bahawa Timbalan Menteri sendiri telah berpuas hati bahawa cabang pertama s 4(1) telah dilanggar sebelum menandatangani perintah, dan bahawa beliau bertindak secara keseluruhannya.

(5) Adalah tidak perlu untuk menghadapkan orang tahanan ke mahkamah sebelum mereka dibebaskan. Perkataan-perkataan 'hendaklah memerintah orang itu dibawa ke hadapan mahkamah itu dan melepaskannya' di dalam perkara 5(2) Perlembagaan Persekutuan adalah dinyatakan secara permisif, kerana mereka bertujuan untuk membolehkan sesuatu dilakukan. Perkataan-perkataan berkenaan membayangkan unsur budi bicara dan mesti ditafsirkan sebagai bersifat budi bicara kerana tiada apa-apa dalam isi perkara yang menunjukkan bahawa mereka dimaksudkan untuk bersifat imperatif dan walaupun perkara 5(2) telahpun wujud sebelum pemansuhan A 54 yang lama Kaedah-kaedah Mahkamah Tinggi 1980 (berkenaan dengan kuasa hakim yang mendengar permohonan habeas corpus untuk memerintahkan pembebasan orang tahanan), tetapi kesemua hakim di Malaysia kecuali satu, telah memerintahkan supaya orang tahanan dibebaskan tanpa mewajibkan kehadiran mereka di mahkamah terlebih dahulu.]

Notes

For cases on detention orders under the Emergency (Public Order and Prevention of Crime) Ordinance 1969, see 10 *Mallal's Digest* (4th Ed) paras 1054–1057; [1989] Mallal's Digest 1274, 1277; [1990] Mallal's Digest 1007; [1991] Mallal's Digest 1529, 1531–1532; [1992] Mallal's Digest 1361; [1993] Mallal's Digest 1070, 1073–1075.

For cases on applications for habeas corpus in preventive detentions, see 5 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 1379–1388.

For cases on interpretation of the Constitution, see 11 *Mallal's Digest* (4th Ed) paras 1303–1307.

Cases referred to

Carltona Ltd v Works Commissioners [1943] 2 All ER 560 (refd)

Chin Chong Nang v Menteri Hal Ehwal Dalam Negeri Malaysia & Satu Yang Lain [1991] 2 CLJ 1126 (refd)

Government of the State of Kelantan v Government of the Federation of Malaya & Tunku Abdul Rahman Putra Al-Haj [1963] MLJ 355 (folld)

Julius v Oxford (Lord Bishop) (1880) 5 App Cas 214; [1874–80] All ER Rep 43 (folld)

Kanu Sanyal v District Magistrate, Darjeeling & Ors AIR 1973 SC 2684 (folld)

Mohd Amin bin Mohd Yusoff v Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor (Taiping High Court Criminal Application No 44–31–1994) (unreported) (folld)
Munusamy v Public Services Commission [1960] MLJ 220 (refd)
Ng Hong Choon v Timbalan Menteri Hal Ehwal Dalam Negeri & Anor [1994] 3 MLJ 285 (refd)
Newport Bridge, Re (1859) 3 E & E 377 (folld)
PP v Koh Yoke Khoon [1988] 2 MLJ 301 (folld)
Puvaneswaran v Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor [1991] 3 MLJ 28 (folld)
Seaford Court Estates Ltd v Asher [1945] 2 KB 461 (folld)
Surinder Singh Kanda v Government of the Federation of Malaya [1962] MLJ 169 (not folld)
Tan Boon Liat @ Allen & Anor, Re [1977] 2 MLJ 108 (folld)
Tang Hoon Seng v Minister of Home Affairs, Malaysia & Anor and another appeal [1990] 1 MLJ 171 (folld)
Wong Fook Nyen v Timbalan Menteri Dalam Negeri Malaysia & Ors [1988] 2 CLJ 274 (refd)

Legislation referred to

Federal Constitution arts 5(2), 43A(2)
Criminal Procedure Code (FMS Cap 6) s 365(1)(b)
Emergency (Public Order and Prevention of Crime) Ordinance 1969 ss 4(1), 7C
Rules of the High Court 1980 O 54 r 4

Karpal Singh (*Karpal Singh & Co*) for the applicants.
Mahmud bin Hj Abdullah (Federal Counsel) for the respondents.

Abdul Malik Ishak J: These seven applications for orders of habeas corpus were argued together, as the issues raised therein were common in all of them.

The Deputy Minister of Home Affairs issued detention orders against the applicants under s 4(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969 ('the Ordinance'), and directed that they be detained for a period of two years each at the Rehabilitation Centre, Simpang Renggam, Johor.

The order in respect of each of the respondents was made by the Deputy Minister of Home Affairs on different days (for Sukumaran s/o Sundram, Partiban a/l Alagoo and Nadarajan a/l Somasundram, on 14 December 1993; for Suresh Raja a/l A Suranam @ Naraisamy, on 15 July 1994; for Mohamed Latiff bin Yusof, on 8 February 1994; for Ravinchandran a/l Ramasamy, on 7 July 1994; and lastly, for Chan Kam Weng, on 29 January 1994) in identical terms but on different facts. Each of the seven orders was in the following terms (a sample is taken from the detention order of Sukumaran s/o Sundram):

> Bahawasanya saya, Menteri Dalam Negeri, berpuas hati yang perintah ini adalah perlu dibuat di atas orang yang namanya tersebut di bawah ini

dengan tujuan hendak mencegah beliau daripada melakukan perbuatan dengan apa-apa cara yang memudaratkan ketenteraman awam

Nama	Nombor kad pengenalan
Sukumaran s/o Sundram	A1312858

Oleh yang demikian, pada menjalankan kuasa yang diberi kepada saya di bawah s 4(1) Ordinan Darurat (Ketenteraman Awam dan Mencegah Jenayah) 1969, maka saya mengarahkan dengan perintah ini supaya orang yang namanya tersebut di atas ditahan selama dua tahun mulai dari 14 Disember 1993 di Pusat Pemulihan Akhlak, Simpang Rengam, Johor atau di mana-mana tempat lain sebagaimana yang diarah oleh saya dari semasa ke semasa.

Ditandatangani pada 14 Disember 1993
—tt—
(Dato' Megat Junid bin Megat Ayob)
Timbalan Menteri Dalam Negeri
Malaysia

It is a correct statement of the law, to say that the act of the Deputy Minister of Home Affairs in making the seven detention orders cannot be questioned further, as the same is beyond the purview of challenge on any question, save in regard to a question on compliance with any procedural requirement in the Ordinance governing that act: see s 7C of the Ordinance.

Flowing from this, Mr Karpal Singh submits on behalf of the applicants, and he says that he is breaking new ground to the effect that the seven detention orders should not be signed by the Deputy Minister of Home Affairs, but rather by the Minister of Home Affairs, as it was the Minister and not the Deputy Minister that was satisfied under s 4(1) of the Ordinance, in preventing the applicants from acting in any manner prejudicial to public order. He lays emphasis on the words appearing in the detention orders, in particular the following words, 'Bahawasanya saya, Menteri Dalam Negeri berpuas hati ...' and submits whether the powers of the Minister and the Deputy Minister are co-extensive. Put simply, he poses several questions of whether one can exercise the power of the other, or can one act partially and the other to act the other part, or must one act as a whole, under art 43A(2) of the Federal Constitution?

For ease of reference, s 4(1) of the Ordinance is reproduced below:

> If the Minister is satisfied that with a view to preventing any person from acting in any manner prejudicial to public order it is necessary that that person should be detained, or that it is necessary for the suppression of violence or the prevention of crimes involving violence that that person should be detained, the Minister shall make an order (hereinafter referred to as a 'detention order') directing that that person be detained for any period not exceeding two years.

From the purely grammatical point of view, and considering the normal flow of language, it seems quite clear to me that what is intended in s 4(1) of the Ordinance is to confer on the Minister of Home Affairs the power to issue a detention order based on any one of the two limbs which should be read disjunctively. The first limb enables the Minister of Home Affairs

to detain 'a person who has acted in any manner prejudicial to public order', while the second limb empowers the Minister of Home Affairs to detain 'a person, if it is necessary for the suppression of violence or the prevention of crimes involving violence'. These two limbs are quite distinct from one another, and since there is no standard form to follow in resorting to s 4(1) of the Ordinance, the order must be so worded as to show, at least on the face of it, which particular limb the Minister wishes to apply in detaining the detainee.

It is clear from the authorities that the Deputy Minister of Home Affairs has the same powers as the Minister of Home Affairs pursuant to art 43A(2) of the Federal Constitution (*Wong Fook Nyen v Timbalan Menteri Dalam Negeri Malaysia & Ors* [1988] 2 CLJ 274 and *Chin Chong Nang v Menteri Hal Ehwal Dalam Negeri Malaysia & Satu Yang Lain* [1991] 2 CLJ 1126) and, consequently, the Deputy Minister of Home Affairs is empowered to act under s 4(1) of the Ordinance. See *Carltona Ltd v Works Commissioners & Ors* [1943] 2 All ER 560, especially at p 563 where Lord Greene MR said:

> In the administration of government in this country the functions which are given to ministers (and constitutionally properly given to ministers because they are constitutionally responsible) are functions so multifarious that no minister could ever personally attend to them.

But, the problem is as posed by Mr Karpal Singh — can the Deputy Minister act partially and complete the act of personal satisfaction as exercised by the Minister under s 4(1) of the Ordinance? Translated to the facts of the present application, it would be like this. Can the Deputy Minister sign the seven detention orders when the personal satisfaction (a subjective one) that the applicants had breached the first limb of s 4(1) of the Ordinance was exercised by the Minister? With respect, surely the Deputy Minister would not know the state of mind of the Minister when he signed the seven detention orders under s 4(1) of the Ordinance: the state of man's mind is as much a fact as the state of his indigestion. It would be against common sense to hold that the Deputy Minister is empowered to sign the seven detention orders, in the context of this case, when he himself did not apply his mind to which limb of s 4(1) of the Ordinance he was acting under. Looking at the seven detention orders, it can be said, on the face of it, that the Deputy Minister had acted mechanically in making the respective detention orders. Nothing was done here to dispel the view that the seven detention orders were vague, or were passed mechanically by the Deputy Minister.

One cannot infer here that the Deputy Minister had exercised his personal satisfaction before signing the seven detention orders. It is now trite law that the power to detain a person without trial must be expressed, clear and unequivocal, and cannot be exercised by sheer inference (*Re Tan Boon Liat @ Allen & Anor* [1977] 2 MLJ 108, *PP v Koh Yoke Khoon* [1988] 2 MLJ 301 and *Tang Hoon Seng v Minister of Home Affairs, Malaysia & Anor and another appeal* [1990] 1 MLJ 171).

There is a procedural defect here that goes to the root of the matter (*Puvaneswaran v Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor* [1991] 3 MLJ 28). The Minister cannot be satisfied if somebody else signed the detention orders on his behalf. The Minister can only be satisfied if he himself signed the detention orders, like what he did in criminal application No 44–32–94. In my judgment, the Deputy Minister in exercising his functions under art 43A(2) of the Federal Constitution, must act as a whole, and cannot act partially on behalf of the Minister like he did in this case. The defect here is very serious indeed, and it requires intervention. Once the law is infringed, the consequences must follow, and the floodgates argument should not apply.

My attention is drawn to Perintah Menteri-Menteri Kerajaan Persekutuan 1991 vide the gazette notification dated 2 May 1991, Jilid 35, No 9, where the vast and onerous duties of the Deputy Minister are listed. I do not deny that the Deputy Minister's portfolio is wide, but in exercising his powers of detention under s 4(1) of the Ordinance, he must not act mechanically nor breach any of the known procedural rules as set out by the courts in this country.

For the reasons adumbrated above, I ordered the applicants to be set at liberty forthwith. But this is not the end of the matter. It is said that the applicants should be produced before the court, and thereafter, they are to be released. No authority was produced before me for this proposition. In *Mohd Amin bin Mohd Yusoff v Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor* (Taiping High Court Criminal Application No 44–31–1994) (unreported), I referred to a passage appearing in the decision of the then Supreme Court, in the case of *Ng Hong Choon v Timbalan Menteri Hal Ehwal Dalam Negeri & Anor* [1994] 3 MLJ 285, where Wan Yahya SCJ (now a senior member of the Federal Court) said [at p 295], '... It is further ordered that the detainee, Ng Hong Choon be produced forthwith before this court to be set free.' I am bound by the decision of the then Supreme Court. But, unfortunately, apart from the passage just quoted, the then Supreme Court did not delve into the subject matter at great length.

Section 365(1)(b) of the Criminal Procedure Code (FMS Cap 6) ('the CPC'), governing the jurisdiction of the High Court in an application for a writ of habeas corpus reads as follows:

> The High Court may whenever it thinks fit direct —
>
> (1) that any person who —
>
> ...
>
> (b) is alleged to be illegally or *improperly* detained in public or private custody within the limits of the Federation,
>
> be set at liberty; ... (Emphasis added.)

It is germane to note that s 365(1)(b) of the CPC does not lay down the need to produce the detainee in court before his eventual release.

The old O 54 of the Rules of the High Court 1980 ('RHC'), which has since been deleted wholly from the RHC (PU(A) 192/93 with effect

A from 1 August 1993), curiously contains r 4 which makes for interesting reading, and it reads as follows:

> Without prejudice to rule 2(1), the Court or Judge hearing an application for a writ of habeas corpus ad subjiciendum may in its or his discretion order that the person restrained be released, and such order shall be a
B sufficient warrant to any superintendent of a prison or other person for the release of the person under restraint.

All the reported decisions decided before *Ng Hong Choon* have clearly shown that the detainees were forthwith released without being produced in courts. Even the British and Americans felt that there was no necessity
C to produce the prisoners in courts before their release. The same attitude is adopted in India, and this is clearly reflected and amplified in *Kanu Sanyal v District Magistrate, Darjeeling & Ors* AIR 1973 SC 2684, which was adopted and applied in *Mohd Amin bin Mohd Yusof v Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor.*

D In *Kanu Sanyal*'s case, Bhagwati J expressed in strong terms that:

> The inquiry into the legality of the detention can be made and the person illegally detained can be effectively set free, without requiring him to be produced before the court. Why then should it be necessary that the body of the person alleged to be wrongfully detained must be produced before the court before an application for a writ of habeas corpus can be decided by the
E court? Would it not mean blind adherence to form at the expense of substance?

The sentiments expressed by Bhagwati J in *Kanu Sanyal*'s case should apply to Malaysia, notwithstanding art 5(2) of the Federal Constitution which stipulates that:

F > Where complaint is made to a High Court or any judge thereof that a person is being unlawfully detained the court shall inquire into the complaint and, unless satisfied that the detention is lawful, shall order him to be produced before the court and release him.

I am aware of the decision of the Judicial Committee of the Privy Council
G in *Surinder Singh Kanda v Government of the Federation of Malaya* [1962] MLJ 169 at p 171, where Lord Denning said, inter alia:

> ... If there was in any respect a conflict between the existing law and the Constitution ... then the existing law would have to be modified so as to accord with the Constitution ...
H
> ... In a conflict of this kind between the existing law and the Constitution, the Constitution must prevail. The court must apply the existing law with such modifications as may be necessary to bring it into accord with the Constitution ...

But, I hasten to add that great weight should be attached to *Kanu Sanyal*'s
I case, as Ong J remarked in *Munusamy v Public Services Commission* [1960] MLJ 220 at p 223: 'Although Indian authorities have no binding force they are entitled to great weight ...'.

At the end of the day, one must look at the words employed in the Constitution itself in order to interpret it (*Government of the State of*

Kelantan v Government of the Federation of Malaya & Tunku Abdul Rahman Putra Al-Haj [1963] MLJ 355). But in so doing, one must not forget that:

> Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold set of facts which may arise; and that, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticized (*Seaford Court Estates Ltd v Asher* [1945] 2 KB 461 at p 498 per Denning LJ).

Thus, the words '... shall order him to be produced before the court and release him' appearing in art 5 (2) of the Federal Constitution are expressed in permissive language, as it was meant for the purpose of enabling something to be done (*Maxwell on Interpretation of Statutes* (12th Ed) by P St J Langan at pp 234–235, 280–281). Prima facie, those words import a discretion and they must be construed as discretionary because, first, there is nothing in the subject matter to show that they are meant to be imperative (*Re Newport Bridge* (1859) 2 E & E 377 at p 380 and *Julius v Oxford (Lord Bishop)* (1880) 5 App Cas 214 at p 222; [1874–80] All ER Rep 43 at p 47), and secondly, before the old O 54 of the RHC that was totally deleted on 1 August 1993, art 5(2) of the Federal Constitution was already in existence, yet Malaysian judges before me, except the judge in *Ng Hong Choon*, saw it fit to release the detainees without requiring their attendance.

Order accordingly.

Reported by Isabel Liong